

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/850,073 05/02/97 HESS

R 016565-049

QM12/0411

EXAMINER

John C. Andres  
Vice President and General Counsel  
150 Glover Avenue  
Norwalk CT 06856

LACYK, T

ART UNIT

PAPER NUMBER

3736

DATE MAILED:

04/11/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>08/850,073</b>	Applicant(s) <b>Hess</b>
	Examiner <b>John P. Lacyk</b>	Group Art Unit <b>3736</b>

Responsive to communication(s) filed on Dec 8, 2000.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-21, 23-25, and 28-33 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 1-5 is/are allowed.

Claim(s) 6-21, 23-25, and 28-33 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

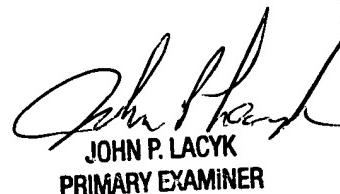
Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152



JOHN P. LACYK  
PRIMARY EXAMINER

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3736

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/8/00 has been entered.

2. The amendment filed 12/8/00 is improper. The amendment to the specification does not include underlining of the additions; also the new claims 28-33 lack the proper underlining. See M.P.E.P. 1453.

3. In view of the fact that additional errors in the original patent have been corrected through amendments to the claims, a new/supplemental oath or declaration complying with 37 CFR 1.175 (a) is required.

4. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

5. Claims 10 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 still fails to further define the device. In claim 10, line 8, "in close proximity" is indefinite in that it is unclear what the limitations of such language are.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3736

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Weinstein et al.

Weinstein et al discloses a device that positions a radioactive source within a stenosed area where a shielding means is "repositioned" to expose the radioactive source for the treatment and the device and the radioactive source are withdrawn after treatment.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Lacyk whose telephone number is (703) 308-2995.



JOHN P. LACYK  
PRIMARY EXAMINER

John P. Lacyk

March 14, 2001